

Federal Communications Commission

DA 99-318

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Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 18 1999

FCC MAIL ROOM

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Pottsboro, Roxton and Whitesboro,)

Texas, and Durant, Leonard, Madill,)

and Sopher, Oklahoma))

MM Docket No. 98-63

RM-9209

RM-9392

RM-9393

REPORT AND ORDER

(Proceeding Terminated)

Adopted: February 10, 1999

Released: February 12, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making and Order to Show Cause in this proceeding. 13 FCC Rcd 9395 (1998). Thomas E. Spellman d/b/a Grayson Broadcasting Company ("Grayson Broadcasting") filed Comments. Robert S. Sullins ("Sullins") and Thomas S. Desmond ("Desmond") each filed Comments and Counterproposal. Grayson Broadcasting, Sullins and Desmond filed a Joint Request for Approval of Settlement Agreement. For the reasons discussed below, we are substituting Channel 273C2 for Channel 272A at Madill, Oklahoma, reallocoting Channel 273C2 to Whitesboro, Texas, and are modifying the license of Station KMAD-FM, Channel 272A, Madill, to specify operation on Channel 273C2 at Whitesboro, Texas.

Background

2. At the request of Grayson Broadcasting, the Notice of Proposed Rule making and Order to Show Cause proposed the allotment of Channel 273C3 to Pottsboro, Texas, as a first local service. In order to accommodate that allotment, Grayson Broadcasting proposed two channel substitutions. First, Grayson Broadcasting proposed the substitution of Channel 292A for Channel 296A at Durant, Oklahoma, and the modification of the license of Station KLBC, Channel 296A, Durant, to specify operation on Channel 292A. Second, it proposed the substitution of Channel 296A for Channel 272A at Madill, Oklahoma, and the modification of the license of Station KMAD-FM, Channel 272A, Madill, to specify operation on Channel 296A. In response to the Notice, we received two counterproposals. Sullins, licensee of Station KMAD-FM, filed a Counterproposal proposing the substitution of Channel 273C2 for Channel 272A, reallocment of Channel 273C2 to Whitesboro, Texas, and modification of its Station KMAD-FM license to specify operation on Channel 273C2 at Whitesboro. In order to accommodate that upgrade and reallocment, Sullins proposed the substitution of Channel 255A for the proposed Channel 274A allotment at Roxton, Texas, and the substitution of Channel 243A for the proposed Channel 274A at Sopher, Oklahoma.¹ The second counterproposal was filed by Desmond proposing the allotment of Channel 273A to Leonard, Oklahoma, as a first local service.

¹In a separate Report and Order in MM Docket No. 98-7, we dismissed the proposal for a Channel 274A allotment at Roxton, Texas, and allotted alternate Channel 243A to Sopher, Oklahoma. 13 FCC Rcd 20992 (1998). As a result, this aspect of the Sullins Counterproposal need not be considered.

3. On October 29, 1998, we received a Joint Request for Approval of Settlement Agreement. Pursuant to this Agreement, Grayson Broadcasting and Desmond will withdraw their respective rulemaking proposals. In accordance with Section 1.420(j) of the Commission's Rules, the parties have filed declarations attesting to the fact the monies paid by Sullins to Grayson Broadcasting and Desmond do not exceed the legitimate and prudent expenses incurred in the preparation, filing and prosecution of their respective rule making proposals. These withdrawals remove the two remaining impediments to the Sullins' proposal.

4. We are substituting Channel 273C2 for Channel 272A at Madill, Oklahoma, reallocating Channel 273C2 to Whitesboro, Texas, and are modifying the Station KMAD-FM license to specify operation on Channel 273C2 at Whitesboro.² We find that this will result in a preferential arrangement of allotments as required by Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. 5 FCC Rcd 7094 (1990); see also Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). Specifically, this will be a first local service to Whitesboro while AM Station KMAD continues to serve Madill. This will also result in a service gain to 188,682 persons in an area of 7,222 square kilometers. The population that will lose service consists of 159 persons in an area of 37 square kilometers. This population will continue to receive service from at least five aural services and is considered to be well served. See LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).

5. We are allotting Channel 273C2 to Whitesboro as a first local service even though the proposed facility will provide principal city coverage to 85% of the Denison-Sherman Urbanized Area. In accordance with Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995), Sullins has demonstrated that Whitesboro is separate and independent of the Urbanized Area and entitled to a preference as a first local service. See Huntington Broadcasting Co. v. FCC, 192 F2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). Specifically, Whitesboro, with a population of 3,209 persons, is an incorporated community 16 miles outside of the Denison-Sherman Urbanized Area. The Whitesboro local government, consisting of a city council, a mayor and city administrator, provides park and recreational facilities along with police, and fire departments. Whitesboro has its own independent school district which includes an elementary, middle and high school. In addition to its own civic organizations, Whitesboro has its own retail businesses, three banks, three medical clinics, two dental clinics and eleven churches. Finally, Whitesboro has its own local newspaper, local zip code and Post Office.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 31, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below to read as follows:

<u>Community</u>	<u>Channel No.</u>
Madill, Oklahoma	-----
Whitesboro, Texas	273C2

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Robert S. Sullins for Station KMAD-FM, IS MODIFIED to specify

²The reference coordinates for the Channel 273C2 allotment at Whitesboro, Texas, are 33-49-29 and 96-46-44.

operation on Channel 273C2 at Whitesboro, Texas, in lieu of Channel 272A at Madill, Oklahoma, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

Section

8. IT IS FURTHER ORDERED, That the aforementioned Petition for Rule Making filed by Thomas E. Spellman d/b/a Grayson Broadcasting Company for a Channel 273C3 allotment at Pottsboro, Texas (RM-9393) IS HEREBY DISMISSED.

9. IT IS FURTHER ORDERED, That the aforementioned Counterproposal filed by Thomas S. Desmond for a Channel 273A allotment at Leonard, Oklahoma (RM-9392) IS HEREBY DISMISSED.

10. Pursuant to Section 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Robert S. Sullins is required to submit a rule making fee in addition to the fee required for the application to effect the changes authorized in this proceeding.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau